



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2016-0233]**

**RIN 1625-AA00**

### **Safety Zone; Verdigris River Mile Marker 444.5 to 443.5**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a permanent safety zone for an annually recurring marine event in the Verdigris River, from Mile Marker (MM) 444.5 to MM 443.5 in Catoosa, Oklahoma. This action is necessary to protect persons and vessels from the potential safety hazards associated with a fireworks display taking place between late June to early July, 2016 and recurring annually thereafter. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless specifically authorized by the Captain of the Port (COTP), Lower Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0233 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or e-mail LCDR Krissy Marlin, Sector Lower Mississippi River Waterways Management Division, U.S. Coast Guard; telephone (901)521-4725, e-mail Krissy.a.Marlin@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The second annual Liberty Fest is planned to take place on the Verdigris River on July 4th or the first or second weekend before the holiday and is anticipated to continue annually. The Coast Guard established a safety zone for the Liberty Fest fireworks display in 2015 through a temporary final rulemaking. For this year and subsequent years, we propose to establish the safety zone as a permanent annually recurring regulation to safeguard against the hazards associated with a fireworks display on the Verdigris River, near Catoosa, Oklahoma.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. The purpose of this proposed safety zone is to protect both spectators and participants from the hazards associated with a fireworks display on or over the waterway.

### **III. Discussion of Proposed Rule**

The COTP Lower Mississippi River proposes to establish a safety zone for approximately 30-45 minutes occurring between 9:00 p.m. and 11:00 p.m. on one day during July 4th or the first or second weekend before the holiday, occurring annually. The proposed safety zone would encompass all waters of the Verdigris River from Mile Marker (MM) 444.5 to (MM) 443.5 and would cover the time period necessary to ensure safety on the waterway before, during, and after the display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the time, location and duration of the safety zone. Vessel traffic would be restricted from entering, transiting, or anchoring within a

small portion of the Verdigris River for approximately 30-45 minutes during the evening, when vessel transits are less frequent, on one day on July 4th or the first or second weekend before the holiday. Vessels may request permission from the COTP to deviate from the restriction and transit through the safety zone and notifications to the marine community would be made through local notice to mariners (LNM) and broadcast notice to mariners (BNM). Therefore, those operating on the waterway would be able to plan operations around the proposed safety zone and its enforcement times.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996

(Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone for approximately 30-45 minutes during the evening on one day on July 4th or the first or second weekend before each year on the Verdigris River from (MM) 444.5 to (MM) 443.5. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements,  
Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5;

Department of Homeland Security Delegation No. 0170.1

2. In § 165.801, amend table 6, as proposed to be amended at 81 FR 17635 on March 30, 2016, by adding an entry for line 14 to read as follows:

**§ 165.801 Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones.**

\* \* \* \* \*

**TABLE 6 OF §165.801—SECTOR LOWER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES**

Date	Sponsor/name	Sector Lower MS River location	Safety zone
* *	*	*	* * *
14. July 4th or the first or second weekend before.	LibertyFest	Verdigris River, Catoosa, OK	Regulated Area: Verdigris River mile marker 444.5 to 443.5, Catoosa, OK

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Dated: June 9, 2016.



J. L. ADAMS

Lieutenant Commander, U.S. Coast Guard

Acting Captain of the Port

Memphis, Tennessee

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